IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14434 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GULMOHAMMAD @ GULIO AKBAR MANEK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14434 of 2004

MR BA SHIGROHA for Petitioner No. 1

MS HB PUNANI, LD.AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 29/12/2004

ORAL JUDGMENT

Heard Mr.B.A.Shigroha, learned counsel appearing for the petitioner and Ms.H.B. Punani, ld.AGP, appearing

on behalf of the respondents.

2. The present petition is filed under Article 226 r/w. Articles 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 17th June, 2004, passed by the respondent no.2-Commissioner of Police, Rajkot City, under the purported exercise of powers vested with the Detaining Authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act').

3. The petitioner is branded as a "bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in seven offences registered under the Bombay Prohibition Act. While exercising powers under Section 3(2) of the Act, the Detaining Authority has detained the petitioner branding the petitioner as a "bootlegger" mainly on the fact that he was found involved in seven different offences punishable under the Bombay Prohibition Act registered with Bhaktinagar Police Station, Rajkot City, between 22nd April, 2003 and 20th May, 2004 i.e. within a span of approximately 12 months. On all occasions, he was found involved in dealing with prohibited country liquor and the maximum quantity found by the Investigating Agency is of 20 litres in two cases. The authority has also considered the statements of two witnesses recorded by the sponsoring authority on 13th June, 2004. Both these witnesses have narrated the incident that had occurred on 16th May, 2004 and 20th April, 2004, respectively i.e. after the sixth offence was registered on 6th April, 2004.

4. The order of detention is assailed by the present petitioner on various grounds mentioned in the memo of the petition. However, Mr.Shingroha has focused his arguments mainly on two grounds and has submitted that continued detention of the petitioner-detenu at least should be held bad and, therefore, the same should be turned down. The first point pressed into service is that this is a case of unexplained delay in passing the order of preventive detention. While developing this argument, it is submitted that though the last offence is registered on 19th May, 2004 and the petitioner was enlarged on bail by the competent Court on 20th May, 2004, the impugned order was passed after about 27 days. It is also argued that the sponsoring authority has recorded statements of two witnesses on 13th June, 2004 and if the sponsoring authority was eager to place the said statements before the competent authority, then why delay of about 23 days has been caused, which ought not

have been done and the same has not been explained and this has ultimately resulted into delay in passing the impugned order. In support of this argument, Mr.Shingroha has placed reliance on the decision of this Court (Coram : J.R. Vora, J) dated 26th August, 2003, in Special Civil Application No.10182 of 2003 in the case of Maksud Yasin Kayamkhyani v. State of Gujarat. I would like to quote relevant observations of this Court (para:6), which are as under :

"6. If the facts of this case is perused and factual data is examined, it is clear that if the case is examined from the crime wise, the activities of the detenu came to light right from 25.4.2002, the dates on which the crimes allegedly committed by the detenu, registered or unreported, necessarily denotes time gap not only in respect of repeating dangerous behaviour by the detenu but that gap is apparent on the part of the authority to discover such dangerous behaviour of the detenu. An offence came to be registered i.e. third one on 17.7.2002, unreported incident as narrated by the witness occurred on 22.9.2003, again a crime for theft came to be registered against the detenu on 24.9.2002 and again on 10.10.2002 if the incident as narrated by the second witness occurred, then unexplained delay on the part of the authority crystally emerges in discovering the dangerous behaviour of the detenu because the statements of the witnesses came to be recorded on 24.10.2002 and 28.10.2002. Again, the statements came to be verified only on 26.11.2002 by the detaining authority and the order came to be passed on 29.11.2002. The detenu has raised the plea that there is an unexplained delay in passing the order, as aforesaid. There is ample substance in the said plea. It is found that the credible chain including ground of criminal and dangerous activity of the detenu and the purpose of detention is snapped by a long gap of more than one month in absence of the detention order. The facts of the case are also covered by decision of this Court in the matter of THAKORE GIRISHJI 2 GIDHAJI JENAJI vs. DISTRICT MAGISTRATE & ORS., reported in 2002(1) GCD 338 and in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381, the detention order therefore cannot be sustained and deserves to be quashed on this

ground alone."

5. The second point pressed into service by Mr.Shigroha is that the written representation made by the petitioner-detenu through his advocate was not handled promptly. The said representation was sent on 12th October, 2004 and as per the communication received by the petitioner-detenu it was decided by the State Government on 18th October, 2004. But the decision of the State Government was conveyed to the petitioner-detenu on 27th October, 2004. So the delay caused between 18th October, 2004 and 27th October, 2004, requires reasonable explanation. It is true that 22nd October, 23rd October and 24th October, 2004, were public holidays but it was possible for the authority to convey the decision taken by the State Government at the earliest preferably on the next date or at least on 20th October, 2004. These three non-working days are part of total nine days' delay caused and therefore, the respondents cannot take advantage of the fact of these three holidays. Technically they cannot be said to be intervening holidays. So this unexplained delay would make the impugned order bad in law.

6. So on the above grounds, the Court is accepting the say of the petitioner that the authority has committed grave error in recording subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order. Obviously, therefore, it was erroneous to exercise privilege vested with the authority under the Act. So without entering into the merits of other grounds, the order of detention is required to be quashed and set aside.

7. In view of the above, the present petition is hereby allowed. The order of detention dated 17th June, 2004, passed by the respondent no.2 herein is hereby quashed and set aside and the petitioner-detenu is hereby ordered to be set at liberty forthwith, if no longer required for any other case. Rule is made absolute with no order as to costs. Direct Service is permitted.

(C.K. Buch, J)

Aakar